

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

TOMMY MYERS

§

v.

§

CIVIL ACTION NO. 9:06cv128

DIRECTOR, TDCJ-CID

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Tommy Myers, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his sentence time computation. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Myers says that he was released on parole which was later revoked, and the State forfeited the time which he spent on this parole. He states that he wants to prohibit the State from extending his sentence by adding the calendar time that he was on parole to the “long-way discharge date, or final expiration date of his sentence. Myers argued that while he was on parole, he was still in the custody of the State, and that stopping his sentence while he is on parole, and then adding the time back onto his sentence, violates the Constitution.

After review of the petition, the Magistrate Judge issued a Report on September 5, 2006, recommending that the petition be denied. The Magistrate Judge observed that Texas law has long provided that the time spent on parole which is subsequently revoked is not counted toward the sentence, and that the fact that parole is still considered “custody” does not change this. The Magistrate Judge also noted that the Fifth Circuit has upheld this provision of Texas law. Finally, the Magistrate Judge recommended that Myers be denied a certificate of appealability.

A copy of this Report was sent to Myers at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

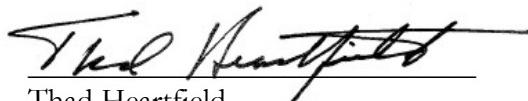
ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Tommy Myers is denied a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this the 25 day of **October, 2006**.



Thad Heartfield
United States District Judge